



Excise Tax Advisory

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NUMBER: 275.08.170 *Repealed June 30, 2000*

CONVERSION DATE: July 1, 1998

DEEDING OF LAND TO CONTRACTOR BUILDING HOUSE FOR LANDOWNER

Issued September 30, 1966

Repealed June 30, 2000

Where a landowner deeds a lot to a contractor who builds a house on the lot and then reconveys the land to the original owner, does the Sales Tax apply to the contract price of the house?

The taxpayer, a building contractor, built houses on land which were conveyed to him by the landowner for whom the house was built. The taxpayer mortgaged the land to a third party to secure financing. When the house was completed, the taxpayer reconveyed the land and house to the original landowner. The price paid to the taxpayer was the contract price of the house. Exemption from Sales Tax on the final transaction was claimed on the basis that the sale of the house and land was a sale of real property.

Rule 130 provides an exemption from Sales Tax on sales of real property. Rule 170 requires building contractors to collect from their customer, the landowner, the Sales Tax measured on the full contract price. However, a speculative builder, one who constructs buildings for sale or rental on land owned by him, is not required to collect Sales Tax on the sale of such a building and lot because he is selling real property.

Deeds, though absolute on their face, may be mortgages, depending upon the surrounding circumstances. Shepard v. Vincent, 38 Wash. 493; Rodda v. Needham, 78 Wash. 636. The primary reason the land was conveyed to the taxpayer was to secure financing. As the property was used for security purposes, the deed served as a mortgage between the landowner and the taxpayer-contractor. The use of the deed form was not determinative as RCW 64.04.010 requires that encumbrances on real property be in the form of a deed. In Washington a mortgage is a lien or security for the payment of money and does not

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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pass title to the mortgagee. Therefore, the landowner remained the owner of the land, the taxpayer was not a speculative builder, and the Sales Tax applied to the contract price of the house. (Letter.)